

Association of Montana Public Health Officials

A leadership and policy development organization representing Lead Local Public Health Officials across Montana

Montana Public Health Association

A diverse organization of public health professionals seeking optimal health and working to shape public health policy for all Montanans

Montana Environmental Health Association

An organization dedicated to maintaining and improving the standards of performance of professionals in Environmental Health and providing a healthful environment for all

January 14, 2013

Senator Taylor Brown
Agriculture, Livestock and Irrigation Committee
Montana State Senate
Helena, MT 59620

RE: LETTER OF OPPOSITION

SB-94 –An act exempting the exchange of certain foods and beverages from food safety regulations; and amending section 50-50-102, MCA

Dear Senator Brown, Chair, and Members of the Committee:

The Association of Montana Public Health Officials (AMPHO), the Montana Environmental Health Association (MEHA), and the Montana Public Health Association (MPHA), their leadership, and their respective members individually and collectively have a vested interest in protecting and improving the health, environment, safety, and wellbeing of all Montanans through an improved, expanded, comprehensive, and appropriately resourced statewide public health system.

The Montana Environmental Health Association is an organization of public health professionals such as Registered Sanitarians, environmental consultants, and other health professionals dedicated to protecting our everyday environment. A few areas that Registered Sanitarian's strive to ensure the daily health of for the public are Montana's licensed food establishments, public water systems, air quality and wastewater systems.

The combined organizations do not support changes proposed in 50-50-102 (2). The intent of the bill proposal is unclear. If the intent is to allow people to sell acidified canned goods such as those listed (tomato sauce, pickles, or other vinegar based foods) in an unlicensed fashion at farmer's markets or any public setting, public health is at risk.

A specific and very serious public health risk is *Clostridium botulinum*, a bacterium found in soil and marine sediments worldwide. Vegetables are grown in soil, thus the high likelihood of the organism being present. Botulinum poisoning is a life threatening disease caused by ingesting the potent neurotoxin produced during the growth of *C. botulinum* bacteria. **Microscopic amounts of the toxin can cause death.** A few food items linked to botulism are **home canned foods**, unrefrigerated homemade salsa, baked potatoes sealed in aluminum foil, garlic in oil mixtures and salted/fermented fish. Typical canned goods that we all eat on a daily basis are currently under state and federal process controls to assure safety.

It is important to understand the significance of botulism poisoning. The toxin affects the central nervous system and can destroy, paralyze or adversely affect nerves and nerve tissue. Death usually occurs by respiratory failure/asphyxia. It is not uncommon for patients to need artificial respiration for prolonged periods prior to death. If survival occurs, lifetime respiratory complications are not uncommon.

The intent of the proposed language is very unclear and public health is at risk by allowing the language as proposed to go forward. The following are questions which require clarification:

1. What does gathering to exchange mean?

Proposed language: 4(b) *The term does not include people who gather to exchange.* This is very vague. Does this include exchanging in a retail or wholesale manner? If so, licensure for pickled products, canned fruits, tomato sauce and other vinegar based foods is currently required per state law. Under A.R.M. 37.110.101, Food and Drug Standards, the Code of Federal Regulations is adopted. Specifically 21 CFR 114 – Acidified foods -sets specific federal regulation for pickled foods in order to assure safety, again, a main concern being *C.botulinum* poisoning.

2. Is the proposed language an attempt to change the definition of an Establishment?

In statute 50-50-102 "Establishment" currently means *a retail food manufacturing establishment, meat market, food service establishment, perishable food dealer, or water hauler.*

Per 50-50-102 (7) (a) "Food Service Establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public at retail, with or without charge.

(b) The term does not include:

- (i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers;
- (ii) a private organization serving food only to its members;

If the proposed change is simply meant for a private organization to serve food only to its members, there is not a need to address this in statute. If the proposed change is meant to provide food to the public at retail, with or without charge, licensure applies. The importance of licensure is for the protection of public health against deadly microorganisms.

3. The proposed language in 4(b)(i) is conflicting. The proposed language leads one to believe that the listed foods are high-acid foods (a natural pH of 4.6 or below) which could carry slightly less risk than acidified foods, however still require process controls for safety.

The proposed language: *high-acid canned goods, including but not limited to tomato sauce, fruits, pickles, or other vinegar-based foods;*

In several ways does not make sense.

- 1. Tomato sauce is not considered a high-acid food which makes it even more necessary to have process controls for safety.
- 2. Only certain fruits are classified as high acid, thus furthering the importance for process controls to assure food safety.
- 3. Pickled foods are described in the Code of Federal Regulations 21CFR 114 and classified as acidified foods (not high-acid foods, pH naturally below 4.6). Acidified foods have specific processes required in order to assure food safety.

4. The intent of the addition of (4)(b)(ii) **Home Brewed Beer** is unclear.

Again, the question as to whether this is exchange among private groups of citizens or for the public with or without charge applies (reference number 2 above) with regard to required licensure. Additionally, Department of Revenue/alcohol sales and tax issues would apply.

5. The proposed language of (4)(b)(iii) **dehydrated fruits and vegetables** is unclear. The current statute exempts unprocessed dehydrated fruits and vegetables from licensure at farmer's markets.

Statute 50-50-102 (16) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not:

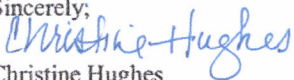
- (a) cooked;
- (b) canned;
- (c) preserved, except for drying;
- (d) combined with other food products; or
- (e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures.

By adding the proposed language, there is a great risk to public health and safety in the form of botulism poisoning. Negative impacts to a community in the event of a foodborne illness include lost wages, substantial medical expenses, and unnecessary death.

Foodborne illness is completely preventable when the appropriate measures are taken to prevent it. Currently, specific process controls for all of the canned foods that the bill lists are utilized by state and federal regulations. Allowing these types of canned goods to be provided to the public without process control is simply unsafe and puts the public at risk. The critical risk being botulism poisoning. Typically, individuals do not recover from botulism, most cases end in death.

Please consider the health of the public when voting on SB94. Foodborne illness is completely preventable and by taking away a means of controlling foodborne illness, our communities are at risk. **We urge you to vote NO on SB 94.**

Sincerely,



Christine Hughes

Registered Sanitarian, MEHA

AMPHO/MEHA/MPHA Joint Advocacy Committee